UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY R. WALDROP, STEVEN W. JOSEY and GETTYS H. KNOX

Appeal No. 2005-0242
Application No. 09/224,980

ON BRIEF

Before TIMM, JEFFREY T. SMITH and PAWLIKOWSKI, **Administrative Patent Judges**.

PAWLIKOWSKI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 15-21.

Claim 15 is representative of the subject matter on appeal and is set forth below:

> 15. A textile comprising:
> a set of first yarns interwoven with a set of second yarns, wherein:
> said first yarns comprising monofilament elastomeric UV stabilized yarn; and
> said second yarns comprising textured polyester and elastomeric UV stabilized yarns.

On page 3 of the brief, appellants state that the claims stand together. We therefore select claim 15 as representative of the rejected subject matter in this appeal. See 37 CFR § 1.192(c)(7)(2003).

The examiner relies upon the following references as evidence of unpatantability:

Gretzinger et al. (Gretzinger)	4,469,739	Sep. 04, 1984
Waldrop et al. (Waldrop)	5,856,249	Jan. 5, 1999
McLarty, III.	5,855,991	Jan. 5, 1999
Stumpf et al. (Stumpf)	6,035,901	Mar. 14, 2000

Claims 15-21 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 6-8 of Waldrop.

Claims 15-21 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of McLarty, III. in view of Gretzinger.[1]

Claims 15-21 stand rejected under 35 U.S.C. § 103 as being obvious over Gretzinger in view of Stumpf.

Claims 15-21 stand rejected under 35 U.S.C. § 103 as being obvious over Stumpf in view of Gretzinger.

We have carefully reviewed appellants' brief, the answer, and the evidence of record. This review has led us to conclude that the examiner's rejections are well-founded.

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[1] Each of the above-mentioned obviousness-type double patenting rejections is sustained in view of appellants' indication that a terminal disclaimer will be filed to overcome these rejections. See page 3 of the Answer. Upon return of this application to the jurisdiction of the examiner, we call upon the examiner and appellants to handle this issue accordingly.

OPINION

We refer to pages 3-7 of the answer regarding the examiner's position in connection with each of the rejections of claims 15-21 under 35 U.S.C. § 103 over the combination of Gretzinger and Stumpf.

The issue in this case is whether the combination of Gretzinger and Stumpf make obvious the subject matter recited in appellants' claim 15, which is reproduced below:

> 15. A textile comprising:
> a set of first yarns interwoven with a set of second yarns, wherein:
> said first yarns comprising monofilament elastomeric UV stabilized yarn; and
> said second yarns comprising textured polyester and elastomeric UV stabilized yarns.

Figure 36 of Stumpf shows first yarns comprising monofilament elastomeric yarn 374, and second yarns comprising (1) texturized yarn of polyester (376A & B) and (2) elastomeric monofilament 378.

As recognized by the examiner on page 6 of the answer, Stumpf fails to teach that the elastomeric material are UV stabilized.

However, the examiner relies upon Gretzinger for teaching that it is customary to utilize UV stabilizers in elastomeric filaments. See col. 8 lines 39-44 of Gretzinger.

On pages 3-8 of the brief, appellants argue that the combination of Stumpf and Gretzinger is improper because there is no reasonable basis for concluding that Stumpf would have been considered by one skilled in the art of automotive upholstery fabric working, on the pertinent problem of minimizing UV degradation of the fabric. Appellants also argue that Stumpf is not within the field of appellants' invention

(automotive upholstery fabric). We disagree with appellants for the following reasons.

We believe that the combination of the references (whether it is Gretzinger in view of Stumpf, or Stumpf in view of Gretzinger) is a proper combination. Stumpf is within the field of the inventors' endeavor. Both Stumpf and Gretzinger are directed to woven fabrics, as is appellants' claimed subject matter. The fabric support made in Stumpf is utilized in the making of the membrane 210 depicted, for example, in Figure 30 and Figure 31 of Stumpf. This membrane forms part of the seating for chair 30 shown in Figure 1. Gretzinger is directed to woven furniture support materials. Gretzinger clearly teaches that it is conventional to utilize UV stabilizers in elastomeric filaments. The known benefits of utilizing UV stabilizers are to protect a fabric against UV exposure. Given that such UV exposure occurs to furniture, the benefits would be useful in the invention of Stumpf, and hence, proper motivation exists in the combination of references.

In view of the above, we affirm each of the 35 U.S.C. § 103 rejections involving the combination of Gretzinger and Stumpf.

CONCLUSION

All of the rejections are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)).

AFFIRMED

CATHERINE TIMM
Administrative Patent Judge

JEFFREY T. SMITH
Administrative Patent Judge

BEVERLY A. PAWLIKOWSKI
Administrative Patent Judge

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